

AMENDED IN SENATE JUNE 8, 2006  
AMENDED IN SENATE MAY 22, 2006  
AMENDED IN ASSEMBLY JANUARY 4, 2006  
AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 798**

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**Introduced by Assembly Member Wolk**

February 18, 2005

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An act to amend Sections 12300, 12301, 12986, and 12987.5 of the Water Code, relating to water *and declaring the urgency thereof, to the effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 798, as amended, Wolk. Delta levee maintenance.

(1) Existing law establishes the Delta Flood Protection Fund in the State Treasury and states the intent of the Legislature that \$12,000,000 be annually appropriated from the fund each year through fiscal year 1998–99, for local assistance under the delta levee maintenance subventions program and for special delta flood protection projects, as specified. Existing law abolishes the Delta Flood Protection Fund on July 1, 2008.

This bill would additionally state the intent of the Legislature to appropriate from the fund additional moneys as they may become available from proceeds from the sale of bonds issued by the state. The bill would abolish the Delta Flood Protection Fund on July 1, 2010.

(2) Existing law establishes a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or nonproject levees in the Sacramento-San Joaquin Delta. Existing law declares legislative intent to reimburse eligible local agencies under this program, until July 1, 2006, in an amount not to exceed 75% of those costs that are incurred in excess of \$1,000 per mile of levee, and on and after that date, in an amount not to exceed 50% of those described costs.

This bill, instead, would declare legislative intent to reimburse up to 75% of those described costs until July 1, 2010, and on and after that date, to reimburse up to 50% of those described costs. The bill would require the department, upon completion of a specified evaluation, to ~~identify~~ *recommend to the Legislature and the Governor* by January 1, 2008, ~~based on that evaluation, those levees that require financial assistance~~ *funding priorities* under this program. The bill would require the Reclamation Board, beginning January 1, 2010, and until July 1, 2010, to allocate available funds under this program only to benefit those levees identified by the department.

(3) Existing law, until July 1, 2006, authorizes the board to provide funds to an eligible local agency under this program in the form of an advance in an amount that does not exceed 75% of the estimated state share.

This bill would extend the operation of that provision to July 1, 2010, ~~beginning January 1, 2007.~~

(4) *The bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Sacramento-San Joaquin Delta encompasses many
- 4 invaluable and unique resources that are of major statewide
- 5 importance, including water supply, agricultural production,
- 6 recreation, fisheries, and wildlife habitat.
- 7 (b) The key to preserving the delta's physical characteristics
- 8 has been the system of levees that defines the waterways and

1 adjacent lands. An urgent need for a higher degree of levee  
2 maintenance and rehabilitation throughout the delta led the  
3 Legislature to provide state technical and financial assistance for  
4 levee maintenance and rehabilitation through a program of  
5 reimbursement to local agencies for a percentage of costs  
6 incurred for levee maintenance and improvement.

7 (c) A major seismic event in the delta would likely cause  
8 significant damage to levees and key transportation and utility  
9 infrastructure. The combination of the continuing subsidence of  
10 delta lands, a rise in sea level, and significant storm runoff events  
11 create a high probability of catastrophic flooding of delta islands.  
12 The state's economy and millions of Californians cannot afford a  
13 lengthy disruption of water supplies derived from the delta.

14 (d) Although the delta is an area of major statewide  
15 importance and the preservation of the delta's physical  
16 characteristics continues to remain a priority, the Legislature  
17 reaffirms its prior declaration that it may not be economically  
18 justifiable to maintain all delta islands.

19 (e) The Department of Water Resources and the Department  
20 of Fish and Game have been directed to identify, evaluate, and  
21 comparatively rate options for maintaining significant resource  
22 values in the delta. The two departments are required to jointly  
23 report to the Legislature and the Governor the results of their  
24 evaluations and options by January 1, 2008.

25 (f) It is necessary and desirable to extend the existing delta  
26 levee maintenance program until the Legislature and Governor  
27 receive and act upon the report.

28 SEC. 2. Section 12300 of the Water Code is amended to read:

29 12300. (a) The Delta Flood Protection Fund is hereby created  
30 in the State Treasury. There shall be deposited in the fund all  
31 moneys appropriated to the fund, including authorized proceeds  
32 from the sale of bonds, and all income derived from the  
33 investment of moneys that are in the fund.

34 (b) It is the intent of the Legislature to appropriate, in  
35 accordance with Section 12938, twelve million dollars  
36 (\$12,000,000) each year through fiscal year 1998–99 to the Delta  
37 Flood Protection Fund from moneys deposited in the California  
38 Water Fund pursuant to subdivision (b) of Section 6217 of the  
39 Public Resources Code. It is further the intent of the Legislature  
40 to appropriate annually moneys in the Delta Flood Protection

1 Fund to the department for expenditure and allocation, without  
2 regard to fiscal years, in the following amounts and for the  
3 following purposes:

4 (1) Six million dollars (\$6,000,000) annually for local  
5 assistance under the delta levee maintenance subventions  
6 program pursuant to Part 9 (commencing with Section 12980),  
7 and for the administration thereof.

8 (2) Six million dollars (\$6,000,000) annually for special delta  
9 flood protection projects under Chapter 2 (commencing with  
10 Section 12310) and subsidence studies and monitoring, and the  
11 administration thereof. These funds shall only be allocated for  
12 projects on Bethel, Bradford, Holland, Hotchkiss, Jersey,  
13 Sherman, Twitchell, and Webb Islands, and at other locations in  
14 the delta and for the Towns of Thornton and Walnut Grove and  
15 for approximately 12 miles of levees on islands bordering the  
16 Northern Suisun Bay from Van Sickle Island westerly to  
17 Montezuma Slough.

18 (3) Additional moneys as they may become available from  
19 proceeds from the sale of bonds issued by the state.

20 (c) Any moneys unexpended at the end of a fiscal year shall  
21 revert to the Delta Flood Protection Fund and shall be available  
22 for appropriation by the Legislature for the purposes specified in  
23 subdivision (b).

24 (d) It is the intent of the Legislature that, to the extent  
25 consistent with Sections 12314, 12987, and 78543, projects  
26 funded under subdivision (b) shall be consistent with the delta  
27 ecosystem restoration strategy of the CALFED Bay-Delta  
28 Program.

29 SEC. 3. Section 12301 of the Water Code is amended to read:

30 12301. The Delta Flood Protection Fund is hereby abolished  
31 on July 1, 2010, and all unencumbered moneys in the fund are  
32 transferred to the General Fund.

33 SEC. 4. Section 12986 of the Water Code, as amended by  
34 Section 13 of Chapter 601 of the Statutes of 1996, is amended to  
35 read:

36 12986. (a) It is the intention of the Legislature to reimburse  
37 an eligible local agency pursuant to this part for costs incurred in  
38 any year for the maintenance or improvement of project or  
39 nonproject levees as follows:

1 (1) No costs incurred shall be reimbursed if the entire cost  
2 incurred per mile of project or nonproject levee is one thousand  
3 dollars (\$1,000) or less.

4 (2) Not more than 75 percent of any costs incurred in excess of  
5 one thousand dollars (\$1,000) per mile of project or nonproject  
6 levee shall be reimbursed.

7 (3) (A) As part of the project plans approved by the board, the  
8 department shall require the local agency or an independent  
9 financial consultant to provide information regarding the  
10 agency's ability to pay for the cost of levee maintenance or  
11 improvement. Based on that information, the department may  
12 require the local agency or an independent financial consultant to  
13 prepare a comprehensive study on the agency's ability to pay.

14 (B) The information or comprehensive study of the agency's  
15 ability to pay shall be the basis for determining the maximum  
16 allowable reimbursement eligible under this part. Nothing in this  
17 paragraph shall be interpreted to increase the maximum  
18 reimbursement allowed under paragraph (2).

19 (4) Reimbursements made to the local agency in excess of the  
20 maximum allowable reimbursement shall be returned to the  
21 department.

22 (5) The department may recover, retroactively, excess  
23 reimbursements paid to the local agency from any time after  
24 January 1, 1997, based on an updated study of the agency's  
25 ability to pay.

26 (6) All final costs allocated or reimbursed under a plan shall  
27 be approved by the reclamation board for project and nonproject  
28 levee work.

29 (7) Costs incurred pursuant to this part that are eligible for  
30 reimbursement include construction costs and associated  
31 engineering services, financial or economic analyses,  
32 environmental costs, mitigation costs, and habitat improvement  
33 costs.

34 (b) Upon completion of its evaluation pursuant to Sections  
35 139.2 and 139.4, by January 1, ~~2008, the department shall~~  
36 ~~identify, based on that evaluation, those levees that require~~  
37 ~~financial assistance under this section. 2008, the department shall~~  
38 *recommend to the Legislature and the Governor priorities for*  
39 *funding under this section.* Beginning January 1, 2010, and  
40 thereafter, only those levees identified by the department as

1 requiring financial assistance shall receive assistance under this  
2 section, absent further legislative action.

3 (c) This section shall become inoperative on July 1, 2010, and,  
4 as of January 1, 2011, is repealed, unless a later enacted statute,  
5 that becomes operative on or before January 1, 2011, deletes or  
6 extends the dates on which it becomes inoperative and is  
7 repealed.

8 SEC. 5. Section 12986 of the Water Code, as amended by  
9 Section 14 of Chapter 601 of the Statutes of 1996, is amended to  
10 read:

11 12986. (a) It is the intention of the Legislature to reimburse  
12 from the General Fund an eligible local agency pursuant to this  
13 part for costs incurred in any year for the maintenance or  
14 improvement of project or nonproject levees as follows:

15 (1) No costs incurred shall be reimbursed if the entire cost  
16 incurred per mile of levee is one thousand dollars (\$1,000) or  
17 less.

18 (2) Fifty percent of any costs incurred in excess of one  
19 thousand dollars (\$1,000) per mile of levee shall be reimbursed.

20 (3) The maximum total reimbursement from the General Fund  
21 shall not exceed two million dollars (\$2,000,000) annually.

22 (b) This section shall become operative on July 1, 2010.

23 SEC. 6. Section 12987.5 of the Water Code is amended to  
24 read:

25 12987.5. (a) In an agreement entered into under Section  
26 12987, the board may provide for an advance to the applicant in  
27 an amount not to exceed 75 percent of the estimated state share.  
28 The agreement shall provide that no advance shall be made until  
29 the applicant has incurred costs averaging one thousand dollars  
30 (\$1,000) per mile of levee.

31 (b) Advances made under subdivision (a) shall be subtracted  
32 from amounts to be reimbursed after the work has been  
33 performed. If the department finds that work has not been  
34 satisfactorily performed or where advances made actually exceed  
35 reimbursable costs, the local agency shall promptly remit to the  
36 state all amounts advanced in excess of reimbursable costs. If  
37 advances are sought, the board may require a bond to be posted  
38 to ensure the faithful performance of the work set forth in the  
39 agreement.

1 (c) This section shall become inoperative on July 1, 2010, and,  
2 as of January 1, 2011, is repealed, unless a later enacted statute,  
3 that becomes operative on or before January 1, 2011, deletes or  
4 extends the dates on which it becomes inoperative and is  
5 repealed.

6 *SEC. 7. This act is an urgency statute necessary for the*  
7 *immediate preservation of the public peace, health, or safety*  
8 *within the meaning of Article IV of the Constitution and shall go*  
9 *into immediate effect. The facts constituting the necessity are:*

10 *In order to facilitate the performance of necessary levee*  
11 *maintenance, as soon as possible, it is necessary that this act*  
12 *take effect immediately.*